Case Study

Adult Club Zoning in Bay County, Fl.

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Robert Jones and Dr. Thomas Taylor

By

Marcus W. Sale
Like many mediated cases this one is was not without its share of controversy. It encompassed moral, religious, ethnic, and financial concerns. Although money was a major factor other factors made the case a difficult process to resolve. Moral issues can be difficult to compromise and may cause some to feel they are compromising their beliefs.

This case presents a moral issue and a community that appears unwilling to compromise its belief system.

**Parties**

There were two major decision making parties and one unorganized secondary party. The club owners were the party who opposed a zoning ordinance that would put them out of business. The clubs are represented by their lawyer, Gary Edinger. The owners never personally come in contact with the mediator or the other parties, but worked through the attorney. The Bay County Commissioners created the zoning ordinance that would limit the clubs right to exist. They were represented by their lawyer Nevin Zimmerman. Mr. Zimmerman would represent the commissioners at the mediation proceedings, and he would present information at the County Commission meetings to commissioners and the public. The public was an unorganized secondary party that influenced the decisions of the commissioners. They had no single representative, but a variety of speakers at commission meetings that included ministers, neighborhood citizens, and community leaders. The court appointed mediator was Michael Kahn who took the challenge of finding a workable solution for all parties. The main parties both expressed a willingness to work toward a solution, but conflicts
occurred to prevent an easy solution. The attorneys were the only ones who worked with
the mediator in finding a solution. Their solutions were found unfavorable by some of
the commissioners and the public as a whole. The adult club owners were willing to
compromise, but the commissioners and the public did not want to compromise beliefs.
Without compromise, (and communication), the parties found it difficult to work
together.

**Substance of the Problem**

This problem focused on strongly held values by all parties involved. Those
values varied depending on which side the party favored. The club owners believed they
had first amendment rights to exist as a form of expression. The commissioners felt they
should have a family community, and they should have control of what was allowed in
their community. The public adhered to the idea that the adult clubs were morally wrong
and should cease to exist in their community.

This problem can be defined best by its central issue the zoning ordinance. This zoning ordinance would limit the location of the clubs at 1500 feet away from
tourist corridors, churches and schools, areas zoned residential, parks, and other such
areas. A ten year amortization period existed to allow the clubs time to relocate and
follow the rules. The community and some commissioners as a whole opposed the long
amortization period and refused to compromise in that area.

There were some secondary issues that appeared as the case progressed. These include restricting newspaper and radio advertisements, limits on road signs, on-
site security, businesses would waive attorney fees, require to keep dancers inside the building and maintain an age limit on dancers.

The clubs main interests are to remain in existence beyond the zoning ordinance. They want enough time to make the changes required of them. This group is willing to compromise, but not to the point of losing their business. The Commissioners want to promote a family atmosphere in Bay County, and they do not want the clubs to interfere with that promotion. They also face political decisions and have to answer to their constituents. The public makes up the voters. They are not interested in the clubs existing and want to find a way to remove them from their community. They have influence on the commissioner’s vote and their voice is a strong decider on the mediation agreement.

All parties are interested in keeping the cost of the solution down. To prevent litigation the parties are willing to follow mediation and limit the cost of the case. The problems seemed to arise in the procedure of the mediation. The mediation only included the mediator and the attorneys. When they came up with an agreement a Commission Meeting was scheduled. Large amounts of community members spoke for a long period of time against the agreement. The commissioners saw their response and voted against the mediated agreement. This obstacle may have occurred with the lack of community interaction in the mediation. If some of the community leaders were and all sides represented, then a workable agreement might have occurred. This seemed to limits is success of the mediation.
Case History

This case began with a 1997 U.S. District Court Case that stated the county’s ordinance regulating conduct inside adult bars was constitutional. The county was seeking to create a more family oriented atmosphere. The same judge was to face the issue of the legality to restrict location of the businesses as well. The businesses threatened to appeal the decision. Realizing the cost in legal fees would be larger, the county agreed not to enforce the zoning ordinance for 18 months.

In November 1998 the attorneys meet a court appointed mediator Michael Kahn. He felt the concessions the business had to offer were greater than advantages that could be made in court. The mediation agreement stated that the business would restrict newspaper and radio ads, make exterior improvements, waive attorney fees, and increase the distance from 1,000 feet to 1,250 feet from tourist corridors, churches, schools and other public facilities. The county would agree to allow business to continue operating as “non-conforming for 10 years. Commissioner Danny Sparks opposed the mediation agreement unless distance was moved to 1,500 feet and a shorter amortization period.

At a meeting in Jan. 5, 1999 Kahn reported the results of the next mediation agreement. The buffer zone was moved to 1,500 feet, further restrictions on advertising would take affect, attorney fees would be provided, and he would wave neutrality to act as the boards consultant for ordinances. Several community members voiced opinions against the agreement and a new meeting was set.

Between the two meetings a Supreme Court decision allowed New York City to prohibit adult business in the city. This would cause many to believe the same would
apply in Bay County if the case were to go to court. Kahn stated the case was different and different results could occur. “The concession that the clubs wave first amendment rights would not occur in court”(News Herald, Jan 12, 1999)

At the Feb. 3 meeting the commissions voted to have the attorneys return to the mediation table. Commissioner Wright proposed his own amendments including reducing the amortization period for 10 years to 5, barring anyone under 21 from working in the business, and giving county right to lock the doors if the clubs try to continue after the amortization period.

On Feb. 16 the mediator meet with the atrocities and the commissioners and proposed a mediation settlement. Several community members opposed the mediation and wanted the case to settle in court, and end the business existence. The commissioners could not afford to send the case to court. New provisions were added to the agreement and some old remained. The buffer zone would remain at 1,500 feet, dancers would have to obtain permits from the sheriff’s office, no performers under 21 by the year 2001, clubs would have one text only billboard, and the amortization period would shrink to 8 years. These provisions passed in a 3-2 vote by the commissioners.

Outcomes

The different party’s satisfaction in the case varies. The club owners were allowed to keep their clubs in business. By giving up a few things they were able to keep their main goal. The Commissioners were split in their success. Three were satisfied with the results, and felt they gained more than if they had tried to pursue a court case. Two felt the clubs should not exist and could have been eliminated in court. The
majority of community members shared this same attitude. The political support suffered, as community members were not satisfied with the mediation agreement. They felt the clubs right to exist prevented them from achieving their goal, eliminating the businesses. The community did not have any representation at the mediation table and suffered in the results. Their power was limited to speaking out in meetings and letters. When the cost appeared to high, the commissioners split and the three chose the agreement over high court cost. Another political element might have resulted from the two commissioners seeking election, sided with the people more than usual. The party’s relationship may not have increased as a result of the mediation as one secondary party felt they lost out (as they were willing to risk in court).

**Conclusions**

This case had great challenges in how the process was handled. The lawyers worked closely with the mediator and failed to produce an agreeable solution. When the commissioners were involved in the process then a solution was decided upon in a split decision favoring the decision by 1. The public was not interested in mediation, but wanted to rid the community of the business. This led to no concessions from that party and the decision was extended extra time due to no deal appeared in site. This situation means mediation was impossible when one side refuses to give any concessions. Money and political ties limited the commissioners with the community. Money became a key factor in the end to the decision. When the court case appeared to expensive, mediation was the only alternative. If the public had some representatives, (beyond elected ones), they may have understood the process a little more and had accepted an agreement. The communities limited involvement in the process caused a great deal of problems.
Perhaps the case would have been more smoothly is the public had representatives at the mediation table.

Case Data


Minutes: Bay County Board of County Commissioners Regular meeting. Jan 5, 1999.


Staff Report. “Court’s smut-shops ruling won’t strip suit against Bay” The News Herald: Jan 12, 1999.


Minutes: Bay County Board of County Commissioners Regular Meeting. Feb. 16, 1999.
